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## **Safe Haven Laws- Good intentions, better methods needed**

### **I. Introduction**

#### **A. What the laws are trying to avoid**

Horrific stories of child abandonment flooded the media in the late 1990s. In one case, a teen couple left their live newborn in a hotel dumpster.<sup>1</sup> Another case involved a college girl who gave birth at her sorority house, wrapped the live infant up, placed it under her bed, and went to class, later disposing of the body in a nearby dumpster.<sup>2</sup> Yet another infamous case involved the “Prom Mom”, who gave birth in the bathroom at her high school prom, strangled the baby, dumped the child in a trash bin and returned to the dance floor.<sup>3</sup> Other mothers have left their infants in hotel bathrooms,<sup>4</sup> and around trash bins.<sup>5</sup> In Michigan, an infant was abandoned in May, 2000, at a Lansing Car Wash.<sup>6</sup> The next month; the Michigan Legislature approved the “Safe Delivery of Newborns Law” with an effective date of January 1, 2001.<sup>7</sup>

#### **B. Purpose of Paper**

Since 1999, 46 states have passed “Safe Haven” legislation.<sup>8</sup> This legislation was passed in response to numerous widely publicized incidents of infants being abandoned under tragic and sometimes gruesome circumstances. In an effort to prevent such occurrences, Legislators swiftly embraced the concept of “Safe Haven” abandonment statutes. Such statutes allow infants to be abandoned under specific circumstances, which

if complied with would allow the abandoning parent to avoid penalty. The acts allow for increased anonymity to protect the abandoner, with the ultimate goal of saving the life of the infant. This paper will give a general overview of the Safe Haven statutes, and arguments for and against their adoption. In addition, the paper will analyze the Michigan law termed the “Safe Delivery of Newborns Act”, concentrating on its strengths and weaknesses and also suggesting changes to make this law more effective.

### **C. Beginnings of a movement**

While not exclusive to the United States, it was not until the 1980s that movements began in this country to address the issue. Other countries, such as Germany, South Africa and Hungary have approached the issue, by creating anonymous drop off programs.<sup>9</sup> In the United States, New York state Senator, Nancy Larrain Hoffman began the promotion of Safe Haven Abandonment laws began as early as 1981.<sup>10</sup> Hoffman was able to convince the Syracuse District attorney not to prosecute women who abandoned their newborns, if the woman’s intent was to safeguard the baby.<sup>11</sup> The District Attorney in Mobile, Alabama made a similar agreement, after a local television reporter approached him after covering a story about a young mother who drowned her newborn in a toilet.<sup>12</sup> The movement finally gained significant momentum after a string of thirteen (13) abandonments occurred in Houston during a ten-month period ending in September 1998.<sup>13</sup> In response, the Texas Legislature passed the “Baby Moses” law, which instead of allowing for only criminal abandonment provided a legal alternative to new parents.<sup>14</sup>

## **II. Discussion of Safe Haven Laws**

### **A. Participating statutes**

Currently there are 46 states which have enacted some form of a safe haven program for the legalized abandonment of newborns.<sup>15</sup> Obviously, this trend is one which has overwhelming support throughout the country. Although the overall goal of the legislature is the same, to encourage those who are considering abandoning their newborns to do so in a safe locale, which is prepared to handle such a situation, in the hope that the child will survive, the details of the laws vary from state to state. All of the bills have similar characteristics. Each state provides guidelines for where the baby can be left, who may leave the child, the conditions under which the child may be left, what procedures are required once a child has been left, and the scope of the liability of the person abandoning the child. It is essential to review the elements of the law specifically for the jurisdiction at hand, as only full compliance with the law provides the abandoner with the protection allowed under it. Because each state has made this type of legislation unique to their jurisdiction, only a general summary will be given, without analyzing each state's law in detail.

Under Michigan Law, "Except as provided in subsection (3), a father or mother of a child under the age of 6 years, or another individual, who exposes the child in any street, field, house, or other place, with intent to injure or wholly abandon the child is guilty of a felony, punishable by imprisonment for not more than 10 years."<sup>16</sup> The Safe Delivery of Newborns Act comes into effect in the next provision. The next subsection of the act provides: "Except for a situation involving actual or suspected child abuse or neglect, it is an affirmative defense to a prosecution under subsection (1) that a child was not more than 72 hours old and was surrendered to an emergency service provider under...MCL 712.1-712.20."<sup>17</sup>

## **B. What is a safe haven?**

A Safe Haven is a place, or a person, designated by that state, which is mandated to accept newborns that fit into the statutory requirements. In most cases, a ‘safe haven’ is a place. In the majority of states, the location of condoned abandonment is most often a hospitals or other emergency medical service provider.<sup>18</sup> Some states also include a fire, ambulance or police stations.<sup>19</sup> Health departments, and licensed adoption agencies are also included in some states.<sup>20</sup> Arizona also specifies churches and places of worship as a safe haven.<sup>21</sup> This expansion is a logical one, as houses of worship are considered safe havens for asylum purposes.<sup>22</sup>

In addition, a safe haven can also be a person. Emergency workers, firefighters, police officers, are also considered to be safe havens in some states.<sup>23</sup> In North Carolina, the safe haven definition includes any adult, which opens the options up tremendously.<sup>24</sup>

According to the Michigan ‘Safe Delivery of Newborns Law’ the safe haven designation is given to “Emergency Service providers”.<sup>25</sup> An ‘Emergency Service Provider’ is defined as: “...a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when such an individual is inside the premises and on duty.”<sup>26</sup> This definition signifies that the safe haven is a person, not just a site. In addition, it mandates that the provider be on duty and inside the premises. Arguably this would mean that a provider not on the premises, i.e. a policeman not at the police station would not qualify.<sup>27</sup> Off duty providers also would not qualify, a designation that may be difficult for the abandoning parent to make during the abandonment process.

### **C. Who may leave the child?**

The next question is who may leave the child. Given the object of allowing anonymity for the person abandoning the baby, the designation of who may leave the baby seems somewhat moot. However, if the requirements of that state's safe haven law are not followed precisely, the person abandoning the baby is subject to liability for the crime of abandonment. In the majority of jurisdictions, only the parents may leave the child.<sup>28</sup> Other states allow someone other than the parent to abandon the child, on behalf of the parent.<sup>29</sup> Delaware's statute states that a 'person' can leave the child, without any further qualifying language.<sup>30</sup> For the purpose of this paper, it will be assumed that the person abandoning the child is a parent.

Under the Michigan Act, only a parent who surrenders a child is granted protection from the law.<sup>31</sup> Therefore, if the person abandoning the child is not the parent, even if they are acting at the bequest of the parent, they will not fall under the protection of the law.

### **D. Further prerequisites: Age, Lack of Abuse, No Intent to Return.**

There are also other prerequisites for the conditions under which a child may be left. First, all states require that the child must meet the statutory requirements regarding the age limits of children accepted. The age limits vary from state to state. The minimum and most prevalent age limit is seventy-two (72) hours, or three (3) days.<sup>32</sup> The second most common category is states that allow a child up to thirty (30) days to be accepted. One state, North Dakota allows babies up to one year to be included in the protected range.<sup>33</sup> With regard to age, some states provide guidelines as to how the age of the child is to be determined, typically by a physician making that determination.<sup>34</sup> However, in

reality, it can be very difficult for a person accepting a child to determine, within hours, the age of the child. For the most part, it can be assumed that the person accepting the child makes an approximation of age, or tries to get the information from the person abandoning the child.

These age limits indicate two targeted sub-categories. The age limit of seventy two hours targets people who have a child and want to abandon it immediately, perhaps without anyone else knowing of the child's existence. This seems to be aimed at the mothers, who have possibly concealed their pregnancies and out of desperation, immediately try to get rid of the child. In Michigan, the age limit of newborns accepted under the "Safe Delivery of Newborns Act" is "a child who a physician reasonably believes to be not more than 72 hours old."<sup>35</sup> This signifies that a physician's judgment is necessary for the determination of the age of the child.

The age limit of thirty days suggests that the law is aimed at persons who made an attempt at taking care of the child, but for whatever reason find themselves unable to do so. The highest age limit, of one year would also be aimed at that same group.

The next prerequisite that some states require is that the child shows no sign of having been abused. The purpose of this condition is to prevent those who have inflicted abuse upon a child to escape liability by abandoning the child. While this is not present in the majority of the legislation, it is not without merit. Opponents could argue that this condition also deters those who are not involved in the abuse, but who are aware of it, from removing the child permanently from that environment. However, states already have guidelines and procedures developed which deal with abused children, and many states also have mandatory reporting laws, which require abuse to be reported. This

would simply not provide automatic immunity or affirmative defense option to the person abandoning the child.

In Michigan, once the child has been accepted, a physician must determine the age of the newborn.<sup>36</sup> If the physician determines that the child has been the victim of abuse or neglect, he or she must report this to the appropriate department.<sup>37</sup> This determination of abuse or neglect automatically stops the protection of the act from being granted upon the abandoning parent. The parent is now liable for potentially further abuse or neglect, as abandonment is an indication of such.<sup>38</sup>

Finally, many states require that the person abandoning the child express an intent not to return.<sup>39</sup> This intent could be determined through a statement made by the abandoning person. In addition, many states have established presumptions that if a child is abandoned under the conditions established under these laws, there is no intent to return on the part of the parent.<sup>40</sup>

Under Michigan law, it is a legal presumption that a parent who surrenders a newborn under this act and who does not file a custody action as allowed has knowingly released his or her parental rights to the newborn.<sup>41</sup> This would indicate that the parent does not have the intent to return.

#### **E. Safe haven provider procedures**

Each state also outlines the procedures that must be followed on the part of the safe haven entity which accepts the abandoned baby. The first set of procedures relates to the anonymity provisions of the law. One faction of states allow for complete anonymity on the part of the parent abandoning, forbidding the person accepting the child from asking any questions.<sup>42</sup> A second faction of states allows for anonymity, but allows



the safe haven to ask questions of the parent.<sup>43</sup> The third faction requires the person accepting the child to ask certain questions of the abandoning parent identity and medical history of the child.<sup>44</sup> Finally, some states do not provide for anonymity, yet do not provide for the identification of parents.<sup>45</sup>

The anonymity element, while popular, actuality creates a due process dilemma in terms of the non-abandoning parent. By allowing one parent to abandon the child anonymously, without providing any information, the due process rights of the second parent are put into jeopardy and must be addressed elsewhere.

Under Michigan law, the surrendering parent may be asked to identify themselves.<sup>46</sup> However, it is only a request, and the person is not required to answer. This provision is a part of the requirements of the safe haven provider. In addition, the safe haven provider must first notify the parent that by surrendering the newborn they are releasing the child to be placed up for adoption, inform the parent that they have 28 days to petition the court to regain custody of the newborn, and provide the parent with written materials which reiterates the pertinent information regarding: the surrender constituting a release for the child to be placed up for adoption, the 28 day petition deadline for regaining custody, the notice requirements, the safe delivery hotline, among other information.<sup>47</sup>

In an effort to gather as much information as possible, the safe haven provider is also required to make “reasonable effort” to: encourage the parent to share as much medical and other relevant family history as possible; provide the parent with pamphlets regarding the program, including information about counseling and medical attention; assure the parent that the information she provides will not be made public; inform the

parent that the state must make reasonable efforts to identify the other parent, and then ask for their assistance; among other requirements.<sup>48</sup>

The second set of procedures relates to the physical care of the child. All states provide for the child to be given whatever medical care is necessary.<sup>49</sup> As most of the safe haven sites are some sort of medical care provider, this can be done on site.

However, if necessary, a non-medical care provider may have to transport the child to an appropriate location where the child's medical condition may be examined.

The next set of procedures requires the safe haven to contact the controlling state or county welfare agency to notify them of the abandonment.<sup>50</sup> The time frame allowed for this contact varies, with some requiring the action within twenty-four (24) hours from the time of abandonment.<sup>51</sup> The next step is that the controlling state or county agency takes over physical custody of the child.<sup>52</sup>

The physical care and custody of the child are paramount under the Safe Delivery of Newborns Act. The act states "If a parent surrenders a child who may be a newborn to an emergency service provider, the emergency service provider shall...immediately accept the newborn, taking the newborn into protective custody..."<sup>53</sup> Furthermore, once the child is accepted, the emergency service provider must have the child examined by a physician.<sup>54</sup> The agency must immediately request assistance from law enforcement officials to investigate and determine if the child is a missing child listed in state or national clearinghouses.<sup>55</sup> In addition, the agency must make a temporary placement of the newborn with an approved prospective adoptive parent.<sup>56</sup> Within 48 hours of transferring physical custody of the child to the prospective adoptive parent, the agency shall petition the court to provide authority to place the newborn and provide care for the

newborn.<sup>57</sup> Within 28 days of the surrender, the agency shall make “reasonable efforts” to identify the parent who did not surrender the newborn, including publication of notice in a newspaper of general circulation in the county in which the child was surrendered.<sup>58</sup>

#### **F. Protection for the abandoning parent.**

Finally, three forms of legal protection are granted to the person who abandons the baby, depending on the jurisdiction. Child Abandonment is a crime in every state in the Union.<sup>59</sup> Without the protection provided under the safe haven laws, the persons abandoning the child could face significant punishments including jail time of up to 10 years in some jurisdictions.<sup>60</sup> Under the safe haven laws, the person abandoning the child escapes punishment. The first two methods of protection are very similar in effect. The first method that states have chosen as a form of protection is to simply state that abandonment according to the statutory procedures is not a violation of the relevant state law.<sup>61</sup> The second method provides that a parent will not be prosecuted for the relevant crime if he or she complied with the law.<sup>62</sup> These two forms of protection function so that a state could not bring an action against the parent if it were known that the parent complied with the statute. The third method of protection allows for the person who abandoned the child to present the abandonment according to the procedures as an affirmative defense.<sup>63</sup> The affirmative defense places the burden on the defendant’s to prove that they complied fully with the requirements of the law.<sup>64</sup>

As discussed above, regarding the Abandonment laws in Michigan, full compliance with the safe delivery of newborns act qualifies as an affirmative defense for the abandoning parent.<sup>65</sup> It is the parent’s responsibility to prove that they fully complied with the law, in order to not be prosecuted.

### **G. Protection for the Safe Haven**

In addition to the immunity for the abandoning parent, immunity is also granted by the majority of jurisdictions upon those accepting the child.<sup>66</sup> While the immunity granted varies from state to state, in general it is broad, in an effort to protect the safe haven worker.<sup>67</sup>

In Michigan, protection of the safe haven provider is outlined as follows. “The hospital and child placing agency and their agents and employees are immune in a civil action for damages for an act or omission in accepting or transferring a newborn...except for an act or omission constituting gross negligence or willful or wanton misconduct...”<sup>68</sup> In addition, the employees of fire departments and police departments, the other emergency service providers, also share in this immunity, which is beyond the scope of their typical immunity granted under the laws of the state.<sup>69</sup> This immunity provides that unless the actions taken by the emergency service provider constitute gross negligence, which is defined in the act as: “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results,” they are protected.<sup>70</sup> For example, if a child is accepted by a fireman, and it is later determined that it is a ten day old infant, and beyond the reach of the safe delivery of newborns law, that provider is not civilly liable to the parent, who could then face abandonment charges.

### **H. Termination of parental rights**

While efficient adoption procedures are a valid and recognized state goal, the achievement of this goal must not invade the rights of parents.<sup>71</sup> In order for the termination and adoption process to be constitutional, the due process rights of the

parents must be respected. Unless the state has established adequate methods to provide for notice for the parents, termination is premature, and most likely, unconstitutional. A discussion of the constitutionality of safe haven statutes follows in the “Anti-Safe Haven Arguments” which are located later in this paper.

Under the Michigan Statute, a parent has 28 days to file a motion to regain custody of a child abandoned under the act.<sup>72</sup> If the parent who surrendered the child does not file a custody action, the parent is presumed to have knowingly released his or her parental rights to the newborn.<sup>73</sup> In order to regain custody the party making the motion must establish: that they are the parent of the child in question<sup>74</sup> and that it is the “newborn’s best interest” to return to the parent.<sup>75</sup> The guidelines for establishing the best interest of the newborn are very similar to the guidelines used in all custody actions.<sup>76</sup> As can be imagined, for the abandoning parent, it would be extremely difficult to regain custody based on those guidelines. However, for the non-abandoning parent, meeting the standard would not be as difficult.

The 28 days standard is not unique to abandonments occurring within the confines of this act. As mentioned above, whenever a child is abandoned, and the identity of the parents is unknown, a parent has 28 days to file a motion to regain custody of the child, or his or her parental rights may be terminated.<sup>77</sup>

## **II. Arguments against Safe Haven Statutes**

Opponents of the safe haven laws know that the momentum is against them.<sup>78</sup> It is difficult to take a stand against a law, which has a purpose to save the life of newborn babies. However, there are still detractors. The opponents cite constitutional problems,

lack of history for the children, and the fact that the laws are missing the point of the real problem, which is the continuing trend in society toward making everything disposable.

#### **A. Constitutional Rights of parents**

The United States Constitution establishes numerous basic rights of the People, which are enumerated specifically within the Bill of Rights.<sup>79</sup> The United States Supreme Court has held that within the Bill of Rights, are additional rights which are offshoots or penumbras.<sup>80</sup> These penumbras are comprised of certain values and relationships, which are integral to the traditions of society, and are included within the concept of “liberty rights.”<sup>81</sup> The Court has recognized the Parent-Child relationship as one of the most important of these relationships, and has consistently recognized and protected this liberty interest.<sup>82</sup>

The protection of these liberty interests falls under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.<sup>83</sup> This Amendment provides that no state shall “deprive any person of life, liberty or property without the due process of the law.”<sup>84</sup> When a fundamental right or liberty interest is at stake, the Fourteenth Amendment requires heightened protection against government interference of this right.<sup>85</sup> This level of protection ensures that the state cannot restrict the exercise of a fundamental right, unless the restrictions are narrowly tailored to serve the state objections.<sup>86</sup> With the protection of the Fourteenth Amendment, the rights of parents are significantly strengthened. The Court has established that decisions regarding the custody, care, and control of one’s children are protected by the Due Process Clause of the Fourteenth Amendment.<sup>87</sup>

The care, custody and control of a child would also encompass the abandonment of that child, and the subsequent termination of parental rights. In turn, there is not constitutional right to abandon one's child. Although these Acts allow one parent to abandon the child, the rights of the other parent still need to be respected. Therefore, in order for a statute, such as the Safe Haven ones being analyzed in this paper to be constitutional, it must not unduly restrict the rights of either of the parents, and it must also be narrowly tailored to fulfill a compelling governmental interest.

### **B. Standards in Termination of Parental Rights**

In *Santosky v. Kramer*, the Supreme Court established that in termination proceedings the state must meet its burden by "clear and convincing evidence."<sup>88</sup> This high burden was established in termination cases because of the need to protect parental rights by avoiding mistakes in such proceedings.<sup>89</sup> The Michigan Supreme Court has also taken measures to protect the rights of parents in termination proceedings, by granting indigent parents the right to counsel and transcripts for appeals.<sup>90</sup> As with many other areas of family law, the details of the actual law vary greatly from state to state. Each state determines the conditions in which termination of parental rights may be appropriate. In Michigan, terminations may be made when it has been proven through clear and convincing evidence that abandonment has occurred.<sup>91</sup> This termination may occur due to abandonment under three circumstances.<sup>92</sup>

- (i) The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.

- (ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
- (iii) The child's parent has voluntarily surrendered the child to an emergency service provider under Chapter XII and did not petition the court to regain custody within 28 days after surrendering the child.”<sup>93</sup>

In cases of abandonment, once the statutory requirements have been met the rights of the parents may be terminated. For the rights to be terminated, a permanency planning hearing must be held regarding the disposition of the child, and if it is found to be in the best interest of the child to not live with his or her parent, the prosecuting attorney may file a petition to terminate parental rights if appropriate.<sup>94</sup>

### **C. Rights of fathers**

Ideally, both parents would be involved and informed about decisions regarding their child. In reality that does not always happen. There are many occasions when a father is unaware that he has a child. The father of a child born out of wedlock is often termed the “putative” father, meaning the alleged father.<sup>95</sup> The Supreme Court has struggled through a myriad of difficult situation, trying to establish the rights of a putative father.<sup>96</sup> Several conclusions may be drawn from this line of cases. The most important is the concept of “biology-plus.”<sup>97</sup> A putative father's rights do not automatically take precedence over the situation, unless he has established more than a biological tie to the child.<sup>98</sup> Instead, to protect his rights, the father must have taken proactive measures at the earliest possible moment, to become a responsible for the child and part of the child's life, through actions such as physical contact, or monetary support.<sup>99</sup>



However, no case has dealt directly with the putative father of an infant abandoned under one of these relatively new statutes. The primary differences between the cases involving an infant, and those involving an older child relate to timing and notice. In the cases heard by the Supreme Court the children were all several years old, and the putative father had ample opportunity to establish a relationship with the child. In *Stanley*, the children's ages are not indicated, but it can be assumed that they are not newborns based on the Court's description the father's interest being that "of a man in the children he has sired and raised."<sup>100</sup> In addition in *Quilloin*, the child was approximately twelve years old.<sup>101</sup> The children in *Caban* were six and four, and the child in *Lehr* was two.<sup>102</sup>

In order to fall within the Safe Haven Acts, a child must be a newborn, typically under 30 days old.<sup>103</sup> With such a short time frame to work within, it is understandable and predictable that some putative fathers are unaware of the child's existence, and have therefore not had the opportunity to establish their position in the child's life. When the mother of a newborn considers abandoning her child, she is likely under significant stress. One overruling factor that has been pinpointed as a motivator in situations where the mother has tried to abandon a newborn is fear. The mother may fear the repercussion from the father, her parents, or society in general. Studies have shown that often, the mother has been in denial about the pregnancy, doing little if anything in preparation for the child's birth.<sup>104</sup> Undoubtedly there are situations where the mother and father are not currently in a relationship, or she may be fearful, whether justifiably or not, that the father will reject the child, and in turn reject her.<sup>105</sup> This fear could prevent the mother from being forthright with the father regarding all aspects of the child, including its existence.

Therefore, the father may have no indication that a child even exists. These types of situations could jeopardize the rights of a father who the mother mistakenly determines has no interest in the child. In a 1998 Mississippi case, *Smith v. Malouf*,<sup>106</sup> the court held that a putative father, who had been thwarted in his efforts to locate his child by the infant's mother, still retained his constitutionally protected parental rights.<sup>107</sup> The crucial factor in that case was the father's earnest desire to establish a parent-child relationship.<sup>108</sup> In Safe Haven situations, the father may have no opportunity to consider whether he wants to establish a relationship, much less an opportunity to establish any desired relationship.

In addition, the Safe Haven laws allow for one parent, most likely the mother, to be the sole decision maker in the child's life. A common criticism among Family Law Advocates is the current lack of recognition given to fathers. Perhaps as a backlash against the long held male dominated traditions of the man being the head of the household, there has been a trend in the twentieth century toward empowering women, especially in regard to children. Although this trend is by no means completely unjustified, given the lack of power previously given to women, it is a legitimate concern that fathers are being excluded from the lives of children. While some may defend the trend as being supported by the strong biological connection between mothers and children, such a connection can no longer automatically override the rights of a father.

The fact that abandonment occurs anonymously also impedes the likelihood that the father will be located. This ensures that the agency with whom the child is left, and eventually the State with whom the child is eventually entrusted, will have little if any guidance in attempting to name or locate the putative father. With a risk as great as

depriving a father of his liberty interest in being a parent to his child, significant efforts need to be made to prevent wrongful termination of those rights in favor of speedy adoption.

### **C. Other problems -- Due Process violations**

Because parenthood is such a protected fundamental right, it is crucial that laws which provide for the termination of such a right are carefully crafted to provide the full benefits to the parent under the law. Such protection, under the Due Process clause of the Fourteenth amendment includes notice of the proceedings to terminate and the opportunity for the non-abandoning parent to be heard.<sup>109</sup> Unfortunately, however, when it comes to the safe haven laws, often the due process rights of the non-abandoning parent, who is usually the father, are ignored. Due to the anonymous nature of the abandonment, often very little is known about the father. A breakdown of the safe haven statutes across the country reveals that there are three major categories of states, pertaining to how the absent parent's rights are addressed.

First, the majority of states fall into a category which does not address providing the absent parent with notice of the termination.<sup>110</sup> In addition, some of these laws only reference existing law, which often also does not address the issue adequately.<sup>111</sup> Therefore, these laws are unconstitutional because failing to address the procedural rights of the non-abandoning parent is a violation of the Due Process Clause.

Second, some states appear to meet the minimal due process requirements. These states meet this low standard by conducting a search within the putative father registry to locate the missing parent.<sup>112</sup> A putative registry requires a man who believes that he may have fathered a child out of wedlock to file notice with the appropriate state agency.<sup>113</sup> This, as suspected, happens rarely, as fathers are either unaware of the child, or unwilling

to step forward. Although this is by no means the most effective method of locating the father, if the father is registered as a part of a ‘putative father registry’ and a child of his is abandoned, a match will occur. These types of registries are often criticized for their lack of effectiveness, especially in safe haven abandonment situations. The registries are criticized because a woman could conceal the pregnancy from the father, and he would have no knowledge of the existence of the child, or of his need to come forward and be a part of the registry.<sup>114</sup> In addition, registry in one state does not guarantee notice in another state. These significant shortcomings illustrate why more than this type of effort to locate the father should be conducted.

Third, some states meet the due process requirements by providing constructive notice.<sup>115</sup> This category of states, which includes Michigan, requires that notice is given through publication in widely circulated newspapers.<sup>116</sup> Delaware requires publishing notice in a statewide newspaper:

...at least 3 times over a 3-week period immediately following the surrender of the baby unless the Division has relinquished custody. The notice at a minimum, shall contain the place, date and time where the baby was surrendered, the baby’s sex, race, approximate age, identifying marks, and any other information the Division deems necessary for the baby’s identification.<sup>117</sup>

In addition, Florida law requires a diligent search be conducted in an effort to locate the father.<sup>118</sup> These efforts, which are by no means perfect, at least satisfy the constitutional requirements of providing notice.

#### **D. Lack of history for the children.**

Because of the anonymous nature of the safe haven laws, little information is typically known about the abandoned newborn. As a result, opponents of the legislation

point to this as being another shortcoming of the legislation. According to Susan Dark, Director of the Peabody, Massachusetts Adoption Connection, an organization which assists adoptees looking for their biological families, abandoned babies are “living breathing people, who will grow up, and who have a right to ask questions and get answers, who have a right to an identity, who have a right to medical history.”<sup>119</sup> Although it is easy to counter that argument with the fact that babies abandoned in dumpsters have no medical records, but they don’t have the chance at life, there are other, potentially harmful consequences from the lack of information.

The lack of medical information may jeopardize the adoption process for these children.<sup>120</sup> Potential adoptive parents may be unwilling to risk adopting a child who may have serious unknown health issues. This argument can also be countered by pointing out that it is widely believed that it is better to be given a chance at life, than not to.

There are also long term health risks for the child.<sup>121</sup> The abandoned newborn may inherit conditions which if undetected could be life threatening.<sup>122</sup> Again, supporters of the legislation can argue that the chance down the road of life threatening conditions, while serious, is not as immediate a threat to the life of the child as is illegal, unsafe abandonment.

#### **E. Missing the point of the real problem**

Opponents of the legislation question the overall effect of a law which condones and even encourages abandonment. The laws are seen as further support for the argument that society is progressing further toward a disposable society. Some claim that the phenomena of newborn abandonment is a result from a mentality that exists in society

that everything is disposable.<sup>123</sup> Until the reasons behind child abandonment can be ascertained, it is difficult to change the trend. Some suggested reasons include drug addiction<sup>124</sup>, lack of resources<sup>125</sup>, homelessness<sup>126</sup>, fear and denial.<sup>127</sup>

Most states have done nothing to research why this problem exists, and to attempt to prevent the need for the law, through education, and further contact with at risk pregnant women. However, in 2003, a North Carolina study finally substantiated some of the long held beliefs regarding the prevalence of newborn abandonment, and it also dispelled some incorrect assumptions.<sup>128</sup> The study was primarily conducted through information gathered from 1985-2000 on homicides among children under five days old through the UNC-based Office of the Chief Medical Examiner in Chapel Hill, North Carolina.<sup>129</sup> In addition, information gathered from the State Center for Health Statistics supplemented the study.<sup>130</sup> According to the study, conducted by principal investigator, Dr. Marcia Herman-Giddens,<sup>131</sup> there were some rather surprising findings. First, almost 21% of the women were married, half were unmarried, and the rest were unknown.<sup>132</sup> This dispels the myth that only unmarried mothers abandon their children. In addition, 35% of the mothers identified had other children, and at least a quarter had some prenatal care.<sup>133</sup> It had long been suspected that mothers involved in this type of situation would not be involved in prenatal care, or have any other children.<sup>134</sup> Although the study has revealed that some of the mothers had received prenatal care, the majority, as suspected, did not. A legitimate concern regarding this type of legislation is that it does not place any focus on encouraging prenatal care, a factor which strongly coincides with the health of newborns.<sup>135</sup>

By extrapolating the data collected, it is estimated that 85 newborns are left or killed per year by their parents, with the actual number likely much higher.<sup>136</sup> According to Herman-Giddens, the study means, "...that as a state and a nation, we need to re-examine our assumptions that people who do this are only scared single girls. They are certainly a component, but by no means the only one. We didn't realize this before because no one before had the data needed to do this kind of study in the United States."<sup>137</sup>

With the help of this study, and others like it, Michigan, along with other states can better focus its attention toward aiming publicity regarding this law where it is best needed.

### **III. Argument in favor of Safe Haven Statutes**

#### **A. Promote the wellbeing of citizens**

The act of abandonment has long been a problem in society.<sup>138</sup> While abandonment is a crime, which in some jurisdictions constitutes a felony, some scholars have argued that safe haven laws provide "...a constrained choice between two evils not the complete absence of choice that should be determinative of an actor's willingness or culpability with regards to violation of a criminal law."<sup>139</sup> Passage of safe haven laws was done to achieve the ultimate goal, which is to protect babies by persuading mothers in safe places so they can receive any medical care that is needed and, ultimately, be placed with an adopted family. The state has a significant interest in protecting its citizens. The Supreme Court has upheld statutes designed specifically to protect a child's physical and emotional wellbeing, even though this type of legislation operates in a 'sensitive area of constitutionally protected rights.'<sup>140</sup> As California State Senator James Brulte (R-Rancho

Cucamonga) who introduced the bill in his state succinctly put it, “If we save one life, then we’ve done our job.”<sup>141</sup>

## **IV. Michigan almost has it right**

### **A. Positive Elements in the Michigan statute**

Michigan’s provisions regarding the obtaining of information, and the provision of information to the abandoning parent are excellent. Although safe haven providers in other states may be doing this same thing, Michigan has taken this action to the next step, by requiring the workers to make reasonable efforts to complete this. In addition, Michigan has established a considerable amount of literature regarding this program and has collected data regarding the program as a part of a follow up program.

### **B. Room for improvement.**

#### **i. Improve Notice to Fathers**

The agency accepting the child in Michigan has a higher burden than in many other states. In Michigan the agency is required to make “reasonable effort” to provide the abandoning parent with certain information as well as attempt to get the abandoning parent to provide the agency with additional information. One of the questions the agency must ask is the identity of the non-abandoning parent, after explaining to the abandoning parent that the state must make reasonable efforts to locate the other parent, in order to place the child up for adoption.<sup>142</sup> While most states do not have a similar requirement, Michigan could do more. Currently under Michigan Law, when the identity of the parent of an abandoned child is unknown, the child placing agency must:

(f) Within 28 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the child



placing agency shall provide notice by publication in a newspaper of general circulation in a county where the newborn was surrendered.<sup>143</sup>

This standard has been upheld in Michigan Courts as a sufficient method of providing notice to the absent parent.<sup>144</sup> The law currently allows a judge to decide to use publication if it is “impracticable” to personally serve a parent.<sup>145</sup> However, in that case, *In Re Sears*, the identity of the parent was known and other efforts to contact her were made. In a case such as presented in abandonment under the “Safe Delivery of Newborn’s Act,” the identity of the other parent is presumably often unknown. With the ease of travel in today’s age it is easy to imagine that the non-abandoning parent is not living in the county where the newborn was surrendered, and would have no idea of the occurrence of the publication.

Some suggestions for strengthening the efforts to find the missing parent include: immediate release of all pertinent information, such as a description of the newborn, the circumstances under which the newborn was left and the date, time and place of the upcoming legal proceedings, to the television and radio broadcast, and print media in the area, while keeping the abandoning parent anonymous,<sup>146</sup> or the state’s establishing a DNA database where fathers who think their child may have been abandoned may voluntarily submit a sample which can be compared to abandoned children.<sup>147</sup> In addition, Michigan could follow Florida’s example and require that a mandatory search be conducted to locate the missing parent, as one more effort to protect the rights of that parent.

## **B. Expand the definition of safe haven**

The first way to improve the Michigan Safe Delivery of Newborns Act would be to expand the definition of with whom the newborn may be left. One logical expansion of the definition of who may qualify as a ‘safe haven’ would be to include emergency service workers who are not “on-site”. As the law currently reads, only abandonments occurring ‘on-site’ would qualify.<sup>148</sup> Therefore, a police officer on duty, but on patrol would not qualify. If the state wants to make it as easy as possible for persons considering abandonment to do so, it must expand the definition.

Furthermore, the next expansion would be to include off duty emergency workers. This expansion is logical for several reasons. One reason may be because, in many smaller communities, it may be commonly known who the emergency workers are, and a parent may choose to leave the child in the care of such a person. In addition, not all emergency service workers wear uniforms, and it may be difficult to determine whether a person is on-duty or off.

The definition of “emergency service provider” in the act states: “...a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when such an individual is inside the premises and on duty.”<sup>149</sup> As mentioned above, determining whether a person is an employee of an emergency service provider may be difficult. In some circumstances, these providers have volunteers work on site. To a parent who is looking to abandon the child, he or she may not be aware that the person is only of “volunteer” status. It does not appear from the language that a volunteer would be considered a “contractor” and therefore, the law should be expanded.

Two more additional safe haven alternatives would be to open the protection up for newborns abandoned at Physician’s offices, and other health care facilities. Some

states, such as Idaho,<sup>150</sup> and Iowa<sup>151</sup> have included these expansions in their definitions of “safe havens”.

Parents considering abandonment are under a significant amount of stress. As such, they may be likely to turn to a person in a position of trust, such as a minister, or social worker. Persons who appear to be appropriate keepers of such an abandoned child, such as a child placement agency employee should also be included. This group would also include as Pregnancy crisis centers, Health departments, two places that a harried parent may think of during this type of crisis.

After considering all of the logical expansions posed above, and brainstorming other reasonable alternatives, at some point, the question becomes, ‘Why not all adults?’ This is a very intriguing question. If the state were to permit the newborn to be abandoned to any adult, it certainly would be making the process easier on the abandoning parent. However, is that the only factor to consider? What about the responsibility of the person with whom the newborn is being left? Most average citizens would be unaware of the law, and how it works. This would place a significant burden on the person with whom the child is being left. This person may not be sure of what steps would be appropriate, or they may doubt the sincerity of the abandoning parent, (what if the parent changes his or her mind). In addition, in Michigan, an additional burden is put on the safe haven provider, to make reasonable efforts to identify the parent. During a situation where a newborn is being abandoned by a stranger in the street to another person, the reasonable efforts standard would undoubtedly be much lower. In order for this type of absolute expansion to work, there must be significant public education regarding the program.

### **C. Increase the age, in efforts to encourage further use of the law.**

The age limit placed upon the abandoned child of seventy-two hours is too restrictive. By increasing the age to 30 days, Michigan would be providing not just for parents who are immediately aware they are unwilling or unable to care for the child at the time of birth, but also for other new parents, who have tried to be adequate parents, and when placed under the very real pressures associated with the care of a constantly needy baby feel that they cannot handle the task. These parents can also be given an opportunity to place the child in a safe environment. With the lack of sleep for the parents, and the amount of attention that a newborn needs, it is easy to imagine a parent feeling helpless, and scared. In turn, the new demands may push these already vulnerable parents into making choices which place the newborn's life into jeopardy. Michigan can avoid additional harm to these infants also, by increasing the age limit to thirty days.

One state, North Dakota, has increased the age limit to one year. This age limit was established for many of the same reasons listed above, primarily in an effort to provide a haven for parents who have tried to successfully raise their child, but are not able to. While this may seem a bit of a stretch, Michigan may consider further amending the existing statute to include older children. Currently abandonment outside of the "Safe Delivery of Newborns Act" is considered abuse under Michigan Law.<sup>152</sup> However, the state could potentially prevent even more child abuse by allowing legalized abandonment. Parents who feel the need to abuse their children may recognize this and give up the child instead of exacting further abuse. In turn, a parent who sees the other parent abuse the child may choose abandonment as protection for that child. While these arguments have merit, such an expansion should be strongly opposed for several obvious

reasons. First, this type of abandonment should be detrimental because older children have more connections with the parent, and therefore the abandonment would be more traumatizing for the child. Second, while it would potentially be better for a child to be abandoned than physically abused, there are other legal avenues that provide for the protection of children in such a situation. Third, older children are also harder to successfully place in an adoptive home. Therefore, while an expansion of the law to one year may make sense, any further expansions would have to be carefully considered, as they may do more harm than good for the child.

## **B. Additional funding for awareness campaign**

### **i. Target who to spread word to:**

The study discussed above, conducted by Dr. Herman-Giddens, has shed light upon whom the publicity regarding these programs needs to be targeted at. Suggestions made as a result of the study include distributing information when people apply for marriage licenses, receive prenatal care and participate in adolescent pregnancy prevention programs.<sup>153</sup>

## **C. Improve Public education regarding the statute.**

### **i. Look to NJ for example.**

The next portion of the statutes that must be considered is the public awareness element. One of the major criticisms of these laws is that there is not enough public awareness, and community outreach and education regarding this program. Since the enactment of the statutes, in many states, persons who have abandoned the children, in a manner inconsistent with the legislation have stated that they were unaware that such a law existed.<sup>154</sup>

In New Jersey, the state legislature committed itself to the education and public informational campaign surrounding its Safe Haven law.<sup>155</sup> Through a series of laws that went into effect in August 2000, the state earmarked \$500,000 to be used specifically to establish the public information program.<sup>156</sup> The components of the campaign included the establishment of a 24 hour toll-free hotline that would provide information about the law, and placing ads on busses and billboards were hung in heavily trafficked areas.<sup>157</sup> After the initiation of the public awareness campaign, the calls received at the toll-free hotline increase from 15-20 a month, to 70-80 a month, and by that time seven infants had been surrendered under the law.<sup>158</sup> In a true reflection of the effectiveness of the public awareness campaign, several of the mothers specifically mentioned hearing or reading about the law.<sup>159</sup>

As recently as January 2004, stories of babies being abandoned in Michigan, outside of the Safe Delivery Law have surfaced in the media.<sup>160</sup> According to the local newspaper story, in October 2003, a baby boy was abandoned in the Flint area, on a neighbor's porch.<sup>161</sup> The parents were never identified, and there was no response to the published legal notices posted in November.<sup>162</sup> A spokeswoman for the Michigan Family Independence agency, Maureen Sorbet stated, "This could have been a real tragedy...I've got to imagine that maybe this was some really young mother not aware of a program for this type of thing."<sup>163</sup> In addition, Remus Holbrook, the director of casework services in the family division of the circuit court added, "This just shows that the word is not getting out that there's a safe, effective way to leave a child with no repercussions at all. Whether we get the message out through the schools or somewhere

else, we need to tell these mothers there is a way to leave their child. They don't need to end up in a garbage can or Dumpster or an empty lot. The answer is so simple.”<sup>164</sup>

Michigan should learn from New Jersey's example and expand its public awareness campaign to include similar advertisement. Michigan does have a 24 hour toll-free hotline established, which is very similar to that of New Jersey. However, Michigan needs to take the next step, committing itself to this program, by making further efforts to get the word out. In addition to the billboards and ads in busy areas, additional information should be made available within all state agencies, such as the Secretary of State, the Family Independence Agency, and the Department of Health. Furthermore, Post Offices, Hospitals, after-hour health care offices, and local county agencies, such as the register of deeds, should also display this information. Finally, information regarding the program should be made a part of the sexual education program conducted within the public schools.

#### **D. Follow up**

##### **i. Gather data**

One extremely important provision of the Safe Haven laws, calls for the collection of statistical data regarding these programs. In Michigan, such data has been collected, and is available on the internet at the Family Independence Agency web site.<sup>165</sup> According to the information available in the Safe Delivery Fact sheet, 7 babies were surrendered under the law in 2001, 0 in 2002, and 5 in 2003 (as of 11/14/03).<sup>166</sup> Additional data collected could further assist the state in better targeting public awareness campaigns.

##### **ii. Sunset Provisions**

In December 2003, Michigan Governor, Jennifer Granholm signed into effect a law repealing the sunset provision regarding the Safe Delivery of Newborns Law.<sup>167</sup> This sets the stage for this law to continue indefinitely. Other states should follow Michigan's example and make this law a permanent fixture.

## **V. Conclusion**

Although the Safe Haven laws are still relatively new, and not without fault, they were created with an admirable goal, to protect the most vulnerable of persons, newborn babies. Michigan's version, the Safe Delivery of Newborn's Law, is also not perfect. However, currently, Michigan is one of the few states which has adequately protected the rights of all parties as required by the constitution. With some revision, Michigan's law could combine the strengths of laws written in other states, with the strong foundation that already exists under Michigan law, to create a law which provides protection for both the newborn, and the parent.



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<sup>1</sup> See Jack Sullivan, Woman Accused of Killing Newborn at NDSU Sorority House Pleads Guilty, Forum (Fargo, N.D.), Apr. 28, 2000, at B1.

<sup>2</sup> See Jack Sullivan, Woman Accused of Killing Newborn at NDSU Sorority House Pleads Guilty, Forum (Fargo, N.D.), Apr. 28, 2000, at B1.

<sup>3</sup> Jane Eisner, Baby Safe Havens Don't Touch the Problem, The Record (Bergen County, N.J.) at L13, Dec.4, 2001.

<sup>4</sup> See Margery Eagan, What to Make of women who Think a baby is disposable, Boston Herald, May 30,2000, at 010.

<sup>5</sup> J.M. Kalil, Mother Said she planned to return, Rev.-J. (Las Vegas, NV), Aug. 10, 2001, at 1B.

<sup>6</sup> Patrick Affholter, Legislative Analyst, "Safe Havens For Abandoned Babies." Senate Fiscal Agency, STATE NOTES: Topics of Legislative Interest, May/June 2000 *available at* [www.senate.michigan.gov/sfa/Publications/Notes/2000Notes/NotesMayJun00Affholter.PDF](http://www.senate.michigan.gov/sfa/Publications/Notes/2000Notes/NotesMayJun00Affholter.PDF).

<sup>7</sup> Safe Delivery of Newborns Law, description , *available at* [www.michigan.gov/emi/0,1303,7-102-112\\_220\\_222-2051--CI,00...](http://www.michigan.gov/emi/0,1303,7-102-112_220_222-2051--CI,00...)

<sup>8</sup> **Number of states passing legislation.**

<sup>9</sup> Ana L. Partida, Note: *The Case for "Safe Haven" Laws: Choosing the Lesser of Two Evils in a Disposable Society*, 28 N.E. J. on Crim. & Civ. Con. 61 (Winter 2002) *citing* Child Abandonment: Newborns:California Committee Analysis; Hearing on S.Jud.Bill No. SB 1368 before the Senate Judiciary Comm., at 9, n11(CAL., Apr. 25, 2000) LEXIS, Nexis Library, CA Legislative Committee Analysis on Pending Bills.

<sup>10</sup> Tanya Amber Gee, *Comment: South Carolina's Safe Haven for Abandoned Infants Act: A "Band Aid" remedy for the Baby Dumping "Epidemic"* 53 S.C.L. Rev. 151 (Fall 2001) *citing* John Caher, *Bill Would Decriminalized Child abandonment in some Situations*, N.Y.L.J., Mar. 10, 2000, at 1,7.

<sup>11</sup> Id.

<sup>12</sup> Tanya Amber Gee, *Comment: South Carolina's Safe Haven for Abandoned Infants Act: A "Band Aid" remedy for the Baby Dumping "Epidemic"* 53 S.C.L. Rev. 151 (Fall 2001) *citing* Gary Mitchell, *Safe Abandonment Drive to Save Newborns Reaches 28 States*, Assoc. Press Newswires, May 24, 2000 (on file with author).

<sup>13</sup> Michael S. Raum & Jeffrey L. Skaare, *Encouraging Abandonment: The trend towards allowing parents to drop off unwanted Newborns*, 76 N. Dak. L. Rev. 511, 513(2000).

<sup>14</sup> See 1999 Tex. Gen. Laws 1087, 2 (codified at *Tex. Fam. Code. Ann.* 262.301-262.303) (Vernon Supp. 2003). Texas Governor George W. Bush signed the bill into law on June 19, 1999.

<sup>15</sup> See Child Welfare League of Am., List of Enacted State Safe Haven Legislation at <http://www.cwla.org/programs/prevprev/flocrittsafehaven.htm> (last visited 2/29/04) [Hereinafter Child Welfare League] The following states have adopted Safe Haven legislation: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin. Other states that have recently passed this type of legislation include: Pennsylvania, New Hampshire, Wyoming. States that have pending legislation include: Massachusetts, Nebraska, Virginia. Such legislation was vetoed in HA.

<sup>16</sup> MCLS 750.135(1)(2004).

<sup>17</sup> MCLS 750.135(2)(2004).

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<sup>18</sup> See Child Welfare League of Am., List of Enacted State Safe Haven Legislation at <http://www.cwla.org/programs/pregprev/flocrittsafehaven.htm> (last visited 2/29/04) [Hereinafter Child Welfare League] The following states have adopted Safe Haven legislation: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin. Other states that have recently passed this type of legislation include: Pennsylvania, New Hampshire, Wyoming. Such legislation was vetoed in HA.

<sup>19</sup> See Michael S. Raum & Jeffrey L. Skaare, Encouraging Abandonment: The Trend Towards Llowign Parents to Drop off Unwanted Newborns, 76 *N.D. L. Rev.* 511, 513 (2000).

<sup>20</sup> *Ariz. Rev. Stat. 13-36-23.01*(Supp.2001)

<sup>21</sup> *Ariz. Rev. Stat. 13-36-23.01*(Supp.2001)

<sup>22</sup> house of worship safe haven for political asylum.

<sup>23</sup> *Ariz. Rev. Stat. 13-36-23.01*(Supp.2001), Missouri House bill 1443,

<sup>24</sup> North Carolina House Bill 275.

<sup>25</sup> MCLS 712.2 (2004).

<sup>26</sup> MCLS 712.1 (e)(2004).

<sup>27</sup> Police station as defined in section 43 of the Michigan Vehicle Code states :Sec. 43. "Police station" means every county jail; every police station in any city, village, or township; and the headquarters and every regular subpost of the Michigan state police.

<sup>28</sup> See Raum & Skaare, Supra page 521.

<sup>29</sup> Connecticut, Minnesota, south Carolina and California.

<sup>30</sup> See *Sel. Code Ann. Tit. 16, 907A(b)* (Supp. 2002).

<sup>31</sup> MCLS 712.3(1)(2004).

<sup>32</sup> See *Child Welfare League*, Id.

<sup>33</sup> North Dakota SB 2129 (2001)

<sup>34</sup> Some of those states include: Florida, Minnesota and Michigan.

<sup>35</sup> MCLS 712.1(j)(2004).

<sup>36</sup> See Id.

<sup>37</sup> MCLS 712.5(2)(2004).

<sup>38</sup> MCLS 750.135 (2004).

<sup>39</sup> See Raum & Skaare, Supra page 524.

<sup>40</sup> See Michigan statute, presumption.

<sup>41</sup> MCLS 712. 17(1)(2004).

<sup>42</sup> See Dayna R. Cooper, *NOTE: Fathers are parents too: Challenging Safe Haven Laws with procedural due process*. 31 Hofstra L. Rev. 877 , 883(Spring 2003).

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> MCLS 712.3(2)(d)(2004).

<sup>47</sup> MCLS 712.3(1)(a-d)(2004).

<sup>48</sup> MCLS 712.3(2)(a-g)(2004).

<sup>49</sup> See Raum & Skaare 532.

<sup>50</sup> Id at 533,

<sup>51</sup> *Minn. State. 145.902(2)*.

<sup>52</sup> Raum & Skaare, 533.

<sup>53</sup> MCLS 712.3(1)(2004).

<sup>54</sup> MCLS 712.5(1 &2)(2004).

<sup>55</sup> MCLS 712.7(d)(2004).

<sup>56</sup> MCLS 712.7(c)(2004).

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<sup>57</sup> MCLS 712.7(e)(i)(ii)(iii)(2004). The petition shall include the following: (i) The date of the transfer of physical custody. (ii) The name and address of the emergency service provider to whom the newborn was surrendered. (iii) Any information, either written or verbal, that was provided by and to the parent who surrendered the newborn. The emergency service provider that originally accepted the newborn as required by section 3 of this chapter shall provide this information to the child placement agency.

<sup>58</sup> MCLS 712.7(f)(2004).

<sup>59</sup> MCLS 750.135 (2004).

<sup>60</sup> MCLS 750.135(1)(2004).

<sup>61</sup> See Child Welfare League

<sup>62</sup> See child welfare league.

<sup>63</sup> Id.

<sup>64</sup> See Raum & Skaare pag 538.

<sup>65</sup> MCLS 750.135(2)(2004).

<sup>66</sup> Id.

<sup>67</sup> Id, at 539.

<sup>68</sup> MCLS 712.2(4)(2004).

<sup>69</sup> MCLS 712.2(4)(2004). “To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an employee or contractor of a fire department or police station has the same immunity that this subsection provides to a hospital’s or child placing agency’s agent or employee.”

<sup>70</sup> MCLS 712.1(g)(2004).

<sup>71</sup> Karin Dwelle, Comment: Adoption Without Consent: How Idaho is Treading on the Constitutional Rights of Unwed Fathers, 39 Idaho L. Rev.207, 212, (2002).

<sup>72</sup> MCLS 712.7(f) (2004).

<sup>73</sup> MCLS 712.17(1)(2004).

<sup>74</sup> MCLS 712.11(1)(2004).

<sup>75</sup> MCLS 712.14 (1)(2004).

<sup>76</sup> MCLS 712.14(2)(2004). “The newborn’s best interest in a custody action under this chapter is all of the following factors regarding a parent claiming parenthood of the newborn:

(a) The love, affection, and other emotional ties existing between the newborn and parent.

(b) The parent’s capacity to give the newborn love, affection and guidance.

(c) The parent’s capacity and disposition to provide the newborn with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in place of medical care and other material needs.

(d) The permanence, as a family unit, of the existing or proposed custodial home.

(e) The parent’s moral fitness.

(f) The parent’s mental and physical health

(g) Whether the parent has a history of domestic violence.

(h) If the parent is not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care and custody of the newborn before the newborn’s birth or surrender.

(i) Any other factor considered by the court to be relevant to the determination of the newborn’s best interest.”

<sup>77</sup> See n16.

<sup>78</sup> Donaldson study newspaper article.

<sup>79</sup> U.S. Const. amend I-X.

<sup>80</sup> Griswold v. Connecticut 381 U.S. 479, 85 S.Ct. 1678, (1965).

<sup>81</sup> Washington v. Glucksberg, 521 u.S. 702 (1997).

<sup>82</sup> Lehr v. Robertson, 463 U.S. 248, (1983).

<sup>83</sup> U.S. Const. amend. XIV. 1.

<sup>84</sup> U.S. Const. amend. XIV, 1.

<sup>85</sup> Washington v. Glucksberg, 381 U.S. 702, 720 (1997).

<sup>86</sup> Toni Driver Saunders, Comment, Banning Motherhood: An RX to Combat Child Abuse?, 26 St. Mary’s L.J. 203, at 227 (1994.)

<sup>87</sup> Meyer v. Nebraska 262 U.S. 390 at 399 (1923), USSC held that it was unconstitutional to deprive parents of the right to choose to have their children educated in a foreign language. *See also* Pierce v.

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Society of Sisters, 268 U.S. 510 at 533-35(1925), USSC held that the state could not interfere with the parents decisions regarding the education of their children

<sup>88</sup> Santosky v. Kramer, 455 U.S. 745 (1982).

<sup>89</sup> Id. The Court perceived the risks in termination proceedings to be especially high because of numerous factors such as 1) the imprecision of the substantive termination standards, 2) the vast array of state resources which the state could command to prove its case, 3) the trial court's unusual discretion, and 4) the vulnerability of the poor, uneducated or minority parents to cultural or class bias.

<sup>90</sup> *Reist v. Bay Circuit Judge*, 306 Mich. 326, 241 N.W.2d 55; (1976).

<sup>91</sup> *In the Matter of Lawanda Youtha, Richard Alan and Robert Anthony Sears, Minors v. Alice Sears*, 150 Mich.App. 555, 389 N.W.2d 127(1986).

<sup>92</sup> MCLS 712A.19b(3)(a)(i),(ii),(iii).(2004).

<sup>93</sup> Id.

<sup>94</sup> MCLS 712A.19a(2)(2004).

<sup>95</sup> Black's Law Dictionary pg 516 (1996).

<sup>96</sup> *Stanley v. Illinois, Quilloin v. Walcott, Caban v. Mohammed, Lehr v. Robertson Michael H. v. Gerald D.*

<sup>97</sup> *Quilloin v. Walcott, Caban v. Mohammed.*

<sup>98</sup> Id. Id.

<sup>99</sup> Id. Id.

<sup>100</sup> *Stanley v. Illinois* 405 at 651.

<sup>101</sup> *Quilloin* 434 us at 247.

<sup>102</sup> See *Caban* 441 US at 382-383, See also *Lehr* 463 at 250, 252.

<sup>103</sup> INSERT SAFE HAVEN SITE HERE

<sup>104</sup> The Baby Moses Project, Frequently Asked Questions, available at <http://www.babymoses.org/faq.htm> Question 8.

<sup>105</sup> J.M Kalil, *Mother Said She Planned to Return*, Rev.-J. (Las Vegas, NV), Aug. 10, 2001 at 1B. In August 2001, Monique Tucker, a mother who abandoned her baby by wrapping the newborn in a plastic bag, placing it in a shoebox and left the child on top of a trash bin stated in an affidavit that she "hid her pregnancy because her husband told her if she had another baby he would leave her."

<sup>106</sup> 722 So.2d 490 (Miss. 1998).

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> David D. Meyer, *Family Ties: Solving the Constitutional Dilemma of the Faultless Father*, 41 Ariz. L. Rev. 753, 768-69 (1999).

<sup>110</sup> Dayna R. Cooper, *Fathers are Parents Too: Challenging Safe Haven Laws with Procedural Due Process*, 31 Hofstra L. Rev. 877, 899 (Spring 2003).

<sup>111</sup> See Evan B. Donaldson Adoption Institute, *Unintended Consequences: "Safe Haven" Laws are Causing Problems, Not solving them* 6, 12 n.49(2003) at <http://www.adoptioninstitute.org/whowe/Last%20report.pdf>.

<sup>112</sup> See Dayna Cooper, *Fathers are parents too*, page 897.

<sup>113</sup> Mary Beck, *Toward a National Father Registry Database*, 25 Harv. J.L. & Pub. Pol'y 1031,1039(2002).

<sup>114</sup> Mary Beck, *Toward a National Father Registry Database*, 25 Harv. J.L. & Pub. Pol'y 1031,1049(2002).

<sup>115</sup> Dayna R. Cooper, *Fathers are Parents Too: Challenging Safe Haven Laws with Procedural Due Process*, 31 Hofstra L. Rev. 877, 896(Spring 2003).

<sup>116</sup> Id.

<sup>117</sup> *Del. Code Ann. tit. 16, 907A(h)(Supp. 2004).*

<sup>118</sup> See Fla. Stat. Ann. 63.0423(4)(2004): The diligent search must include, at a minimum, inquires of all known relatives of the parent, inquires of all offices or program areas of the department likely to have the information about the parent, inquires of other state and federal agencies likely to have information about the parent, inquires of appropriate utility and postal provides and inquires of appropriate law enforcement agencies.

<sup>119</sup> From Dumpster to delivery room page 16.

<sup>120</sup> Margaret Graham Tebo, *States Look to Safe Haven Laws as a Protection for Abandoned Infants*, ABA Journal, Sept. 2001, at 30.

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<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> The case for safe haven laws page 61.

<sup>124</sup> Jim Yardley, A Flurry of Baby Abandonment Leaves Houston Wondering Why, N.Y. Times, Dec. 26, 1999, at 14, available at Lexis, News Library, US News Combined file. (“Far more common is the abandonment of newborns in hospital maternity wards by drug-addicted or HIV-infected mothers.”)

<sup>125</sup> Eric Hanson, Baby Abandonment Called ‘An Anomaly’; CPS Assures Help is Available for Mothers, The Houston Chronicle, January 30, 1999, at A1, available at Lexis, News Library, US News combined file.

<sup>126</sup> Id.

<sup>127</sup> John Sanko, New Tactic For Abandoned Kids Comprmise Bill Would Give 72-Hour Window of Protection, Enact Swift Adoption Effort, Denver Rocky Mountain News, Apr. 11, 2000, at 12A, available at LEXIS, News Library, US News Combined File.

<sup>128</sup> New Study estimates 85 newborns killed or left to die per year y parents, usually their mother. UNC news Service *available at* [www.eurekalert.org/pub\\_releases/2003-03/uonc-nse031703.php](http://www.eurekalert.org/pub_releases/2003-03/uonc-nse031703.php).

<sup>129</sup> Id.

<sup>130</sup> Id.

<sup>131</sup> Herman-Giddens is a senior fellow at the North Carolina Child Advocacy Institute and a University of North Carolina School of Public Health adjunct professor. See Id.

<sup>132</sup> Id.

<sup>133</sup> Id.

<sup>134</sup> From Dumpster to Delivery room 22 J. juv. L.1, 16

<sup>135</sup> Id.

<sup>136</sup> New Study estimates 85 newbornskilled or left to die per year y parents, usually their mother. UNC news Service *available at* [www.eurekalert.org/pub\\_releases/2003-03/uonc-nse031703.php](http://www.eurekalert.org/pub_releases/2003-03/uonc-nse031703.php)..

<sup>137</sup> Id.

<sup>138</sup> Id at 62.

<sup>139</sup> John L. Diamond, An Idealogical Approach to Excuse in Criminal Law, 25 New. Eng. J. on Crim. & Civ. Confinement 1,2 (1999).

<sup>140</sup> The case for safe haven laws:Choosing the Lesser of two evils in a disposable society. Pag 77.

<sup>141</sup> Debbe Magnusen, From Dumpster to Delivery room: Does Legalizing Baby Abandonment Really Solve the Problem? 22 J.Juv. L. 1, 2001-2002 *citing* Press Release, California State Senate Republican Caucus, Abandoned Baby Legislation Introduced by Brulte (Jan. 19, 2000), available at <http://www.republican.sen.ca.gov/news/31/pressrelease483.asp>.

<sup>142</sup> MCLS 712.3 (2)(e)(2004).

<sup>143</sup> MCLS 712.7(f) (2004).

<sup>144</sup> *In Re Sears*, 389 NW2d 127 (1986).

<sup>145</sup> MCLS 712A.13(2004).

<sup>146</sup> Fathers are parents too Page 900. South Carolina has such a provision *see* S.C. Code Ann. 20-7-85 (E)(1)(2004).

<sup>147</sup> This type of feature was considered , New Hampire, *see* Fathers are parents too page 901, note 214.

<sup>148</sup> See n85.

<sup>149</sup> MCLS 712.1(e)(2004).

<sup>150</sup> Idaho Code Section 39-8201 et.sec.

<sup>151</sup> Iowa Code 233.2(2004)

<sup>152</sup> MCLS 712A.19b(3)(k)(i)(2004).

<sup>153</sup> New Study estimates....

<sup>154</sup> Carol A. Docan, Article: She could have safely and anonymously surrendered her newborn infant under California law-Did she know that?4 *J.Legal Advoc. & Prac.* 15,18 (2002).

<sup>155</sup> She could have legally abandoned 4 J. Legal Advoc. & Prac. 15, 24

<sup>156</sup> Id.

<sup>157</sup> Id. At 25.

<sup>158</sup> Id.

<sup>159</sup> Id.

<sup>160</sup> Flint Journal, Abandoned Baby may go up for adoption. By Elizabeth Shaw.

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<sup>161</sup> Id.

<sup>162</sup> Id.

<sup>163</sup> Id.

<sup>164</sup> Id.

<sup>165</sup> Family Independence agency web site [www.michigan.gov/documets/FIA-Fact-SafeDelivery\\_82216.7.pdf](http://www.michigan.gov/documets/FIA-Fact-SafeDelivery_82216.7.pdf).

<sup>166</sup> Id.

<sup>167</sup> See n 165. The sun never sets on safe haven baby laws.